

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JUSTIN EDWARD WITTE,)	
)	
Plaintiff,)	
)	
v.)	No. 4:11CV02036 ERW
)	
KEVIN CULTON, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon review of plaintiff's third amended complaint [ECF No. 97]. For the reasons stated below, the Court will (1) order defendants Kevin Culton, Tammy Bordeau, Jason Lee, and William McKinney to file an answer or other responsive pleading to the third amended complaint on or before December 14, 2012; and (2) dismiss without prejudice all claims against Kevin Weber and Charles Conrad.

Background

On October 24, 2012, this Court granted plaintiff's motion to file an amended complaint to assert claims against Kevin Culton, Tammy Bordeau, Jason Lee, and Dr. William McKinney, in their individual capacities [ECF No. 94]. In this regard, the Court stated, *inter alia*, "Plaintiff shall not be allowed to submit any claims in his

amended complaint that are not specifically allowed in this order, or which survived earlier frivolity review."

Third Amended Complaint

In his third amended complaint, plaintiff asserts 42 U.S.C. § 1983 claims against defendants Kevin Culton, Tammy Bordeau, Jason Lee, and Dr. William McKinney, as well as two individuals who have previously been dismissed from this action: Kevin Weber, and Charles Conrad.¹

Pursuant to 42 U.S.C. § 1997e(g)(2), the Court may require any defendant to reply to a complaint brought by a prisoner pursuant to § 1983 or any other federal law if it finds that the plaintiff has a reasonable opportunity to prevail on the merits. A review of plaintiff's amended complaint indicates that his Eighth Amendment claims against defendants Kevin Culton, Tammy Bordeau, Jason Lee, and Dr. William McKinney, in their individual capacities, survive review under 28 U.S.C. § 1915(e)(2)(B) and should not be dismissed at this time. Therefore, the Court will order that said defendants reply to the third amended complaint.

The Court will, however, dismiss all claims against Kevin Weber and Charles

¹On September 17, 2012, this Court granted summary judgment to defendants Kevin Weber and Charles Conrad and dismissed plaintiff's claims against them [ECF No. 81].

Conrad, because plaintiff was instructed to only assert claims in his amended complaint against defendants Culton, Bordeaux, Lee, and McKinney. *See* Fed.R.Civ.P. 41(b).

In accordance with the foregoing,

IT IS HEREBY ORDERED that, **on or before December 14, 2012**, defendants Kevin Culton, Tammy Bordeaux, Jason Lee, and Dr. William McKinney, in their individual capacities, shall file an answer or other responsive pleading directed to plaintiff's third amended complaint [ECF No. 97].

IT IS FURTHER ORDERED that, as to Kevin Weber and Charles Conrad, the third amended complaint is **DISMISSED**, without prejudice, for plaintiff's failure to comply with this Court's Order of October 24, 2012 [ECF No. 94]. *See* Fed.R.Civ.P. 41(b).

A separate Order of Partial Dismissal will accompany this Memorandum and Order.

So Ordered this 15th day of November, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE